

# Module 4: Legal Foundations of Child Welfare

Module 4 provides an overview of the legal basis of child welfare.

It is important that you have a solid understanding of federal and state legislation affecting child welfare services. Other modules and your classroom training incorporate and build upon what you learn in this module.

There is a lot of material in Module 4, and it may seem overwhelming at first; be assured that in time, the provisions of these laws will become very familiar to you.

## Module 4 Overview

Module 4 consists of three chapters:

1. Federal Laws Governing Child Welfare Services
2. Child Welfare in Minnesota
3. Minnesota Criminal Code - Chapter 609

## Module 4 Learning Objectives

When you have completed Module 4, you will be able to:

- Identify basic federal laws affecting the child welfare system
- Identify basic statutes and rules regulating child welfare services in Minnesota
- Identify basic sections of the Minnesota Criminal Code that may become a factor in certain child welfare cases.

## Legal Terms

Before we start with Chapter 1, let's define some terms you will hear throughout this module.

- **Public Law:** A law enacted by the Congress of the United States. Public laws are cited by the letters P.L. and the number of the law. Public laws may lead to the creation of state laws, or statutes.
- **Statutes:** A compiled set of all the permanent laws enacted by the Minnesota legislature. Statutes apply to everyone and they address a broad range of topics.
- **Minnesota Rule:** A general statement to clarify a law and to help govern agency organization, procedures and practice. A state agency – for example, DHS – under legislative authority, adopts rules to make the laws the agency enforces more specific. The rules adopted by Minnesota DHS are called **Administrative Rules**.

<b>§</b>	<b>626</b>	<b>.</b>	<b>556</b>
<b>Statute Symbol</b>	<b>Chapter</b>	<b>Decimal Point</b>	<b>Section</b>
	<b>Title</b>		<b>Subtitle</b>
<b>Current year is implied</b>	<b>Training: Investigation, Apprehension; Reports</b>		<b>Reporting of Maltreatment of Minors</b>

### Minnesota Statute Example

Statutes are cited with a symbol, followed by a specific **chapter** number. Each chapter has a title. Chapters are broken into **sections**; each section has a subtitle.

When we refer to Minnesota Statutes there is an implied reference to the current year, 2010 for example, because the statutes are a gathered set of all the permanent laws of the state.

At the end of this chapter, you are directed to the Minnesota Office of the Revisor of Statutes to learn more about Laws, Statutes, and Rules.

<b>MR</b>	<b>9560</b>	<b>.</b>	<b>0214</b>	<b>Subpart 1</b>
<b>Rule Cite</b>	<b>Chapter</b>	<b>Decimal Point</b>	<b>Part</b>	<b>Subpart</b>
	<b>Title</b>		<b>Part Title and Subtitle</b>	<b>Subpart Title</b>
	<b>Social Services for Children</b>		<b>Protective Services for Children: Definitions</b>	<b>Scope</b>

### Minnesota Rule Example

Rules are typically grouped under the agency that administers them.

Rules are cited with the letters “MR” (Minnesota Rule), followed by a specific chapter number. Each chapter has a title that names the chapter as a whole. Chapters are broken into parts; each part has a title and multiple subtitles. Parts are broken into subparts and each subpart has a title.

The Administrative Rules for the Minnesota Department of Human Services are found in Chapters 2960 to 9585. The specific Social Services for Children rules are found in Chapter 9560.

Rules are binding and have the full effect of law. Minnesota DHS has been granted legislative authority to adopt statements and thereby create **Administrative Rules**. All rules cite specific Minnesota Statutory Authority.

Now that you are familiar with the different terms, let’s move into Chapter 1.

## **Module 4 Chapter 1: Federal Laws Governing Child Welfare Services**

### **Chapter 1 Overview**

As you learned in Module 3, public policy began to address child maltreatment and child service needs in the early 1900s. In the 1970s, the federal government began to focus more closely on child issues in legislative sessions. This paradigm shift was due to increased awareness of child maltreatment issues and research supporting the premise that a tremendous number of battered children, recognized and unrecognized, existed in the United States.

This chapter provides a brief overview of major federal legislation that influences child welfare practice, including amendments to the Social Security Act (SSA) of 1935, and the Child Abuse Prevention and Treatment Act (CAPTA) of 1974, and other laws not related to the SSA.

Federal and state laws regarding work with American Indian children and families are covered in a later module.

## Federal Legislation

As we discuss federal legislation that influences your practice as a child welfare social worker, you will see that major pieces of legislation are related either to the SSA or to CAPTA. We will cover amendments and laws listed below.

SSA and Amendments	CAPTA and Amendments
<ul style="list-style-type: none"><li>• Title IV-E</li><li>• AACWA</li><li>• Family Preservation &amp; Support Services Program Act</li><li>• MEPA/IEPA</li><li>• ASFA</li><li>• Promoting Safe &amp; Stable Families Amendments</li><li>• Safe &amp; Timely Interstate Placement of Foster Children Act</li><li>• Child &amp; Family Services Improvement Act</li><li>• Fostering Connections to Success &amp; Increasing Adoptions Act</li></ul>	<ul style="list-style-type: none"><li>• CAPTA</li><li>• Child Abuse Prevention &amp; Treatment &amp; Adoption Reform Act</li><li>• Child Abuse Amendments</li><li>• Child Abuse Prevention, Adoption, &amp; Family Services Act</li><li>• Child Abuse Prevention &amp; Treatment Amendments</li><li>• Keeping Children &amp; Families Safe Act</li><li>• Adam Walsh Child Protection &amp; Safety Act</li></ul>

Let's start with the SSA and amendments.

### SSA and Amendments

Before continuing, locate the "SSA and Federal Child Welfare Law Amendments" Chart available from the Module 4 Chapter 1 Attachments tab. This document provides additional detail and will be a useful reference in training and in your work.

#### SSA: Titles and Sections

Many federal laws governing the child welfare system are amendments to the federal Social Security Act (SSA) of 1935. The Social Security Act is very large and complex. The SSA is divided into titles; titles, in turn, are divided into sections.

Child welfare laws that amend the SSA are found in many different titles and sections. You will find that **Title IV-E** in particular is very important to your work; the next several screens provide an introduction to its provisions.

## SSA: Title IV-E

### Goals

The primary goal of Title IV-E is to improve the quality of state foster care and adoption programs throughout the nation. Broad-spectrum achievement of the goal increases child safety, permanency and well-being.

Compliance and outcomes are monitored through federal Title IV-E Foster Care Eligibility Reviews, Federal Children and Family Services Review (CFSR), and other analysis processes; Minnesota DHS aids in monitoring compliance by providing comprehensive training, technical assistance, consultation, and county-level CFSRs.

### SSA: Title IV-E Program Areas

There are four major program areas within Title IV-E:

- **Foster Care Maintenance Payments:** received by counties and Minnesota's American Indian Child Welfare Initiative (AICWI) Tribes
- **Adoption Assistance Payments:** received by Minnesota DHS
- **Foster Care Administrative and Training Funds:** received by counties, tribes, children's mental health and family services collaboratives, and Minnesota DHS
- **Adoption Assistance Administrative and Training Funds:** received by counties, Minnesota's AICWI Tribes and Minnesota DHS

Now let's take a look at different legislative acts that have amended the Social Security Act regarding child welfare practices.

### SSA: Title IV-E Foster Care Maintenance Funds

Title IV Section E is one of the major areas of the SSA that applies directly to child welfare. Title IV-E is a very complex federal entitlement program; the information presented here provides a general overview of what you need to know.

Title IV-E includes Federal Foster Care Program Funds which provide reimbursement of Minnesota's costs to maintain children in out-of-home placement. Title IV-E addresses three major concerns:

- Children were too frequently removed from their families without good reason or adequate placement prevention efforts.
- Agency efforts to reunite children with their families were not being made; many children suffered permanent loss of all family contact.
- Children spent years in foster care without a real sense of family or permanency.

## Laws Amending SSA

You will recall that many pieces of federal legislation guiding provision of child welfare services are laws amending the Social Security Act of 1935.

These laws include:

- Title IV-E of SSA
- AACWA, or the Adoption Assistance and Child Welfare Act of 1980
- Family Preservation and Support Services Program Act of 1993
- MEPA/IEPA, the Multi-Ethnic Placement Act and Inter-Ethnic Provisions Act of 1994 and 1996
- ASFA, or the Adoption and Safe Families Act of 1997
- Promoting Safe and Stable Families Amendments of 2001
- Safe and Timely Interstate Placement of Foster Children Act of 2006
- Child and Family Services Improvement Act of 2006
- Fostering Connections to Success and Increasing Adoptions Act of 2008.

All these laws are important and influence your work; however, this chapter we focuses on: MEPA/IEPA, ASFA, Child and Family Services Improvement Act, and the Fostering Connections to Success and Increasing Adoptions Act.

### MEPA and IEPA

In 1994, Congress passed the Multi-Ethnic Placement Act (MEPA). In 1996 MEPA was amended and renamed the Inter-Ethnic Provisions Act, or IEPA, to strengthen and enhance MEPA.

#### MEPA and IEPA:

- Prohibits delaying, denying or discriminating when making licensing or placement decisions based on the parent's or child's race, color or national origin
- Requires recruitment of foster and adoptive families that reflect ethnic and racial diversity of children needing placement
- Makes failure to comply a Civil Rights Act violation.

### ASFA

The Adoption and Safe Families Act (ASFA) was passed in 1997. ASFA:

- Increases state accountability, and establishes safety, permanency and well-being outcome measures to monitor and improve state performance for children in their homes or in foster care
- Adds "safety of the child" to every step of the case plan and review processes
- Promotes adoptions
- Clarifies reasonable efforts through emphasis on child health and safety
- Requires shorter time limits for permanent placement decisions.

ASFA goals of safety, permanency and well-being are the three major review areas for federal **Child and Family Services Review (CFSR)**.

Minnesota has several policies and statutes to help improve outcomes for children and families including a Minnesota Child and Family Services Review (MnCFSR) quality assurance process. At the end of this module, talk with your supervisor about the CFSR process in your county and your county's most recent outcomes and PIP items. ASFA evaluates provision of child welfare services with the following measures:

### **1. Safety**

Safety is measured by assessing two safety outcomes: 1) Children are, first and foremost, protected from abuse and neglect; and 2) Children are safely maintained in their homes whenever possible and appropriate.

### **2. Permanency**

Permanency is measured by assessing two permanency outcomes: 1) Children have permanency and stability in their living situation; and 2) The continuity of family relationships and connections is preserved for children.

### **3. Well-Being**

Well-Being is measured by assessing three well-being outcomes: 1) Families have enhanced capacity to provide for their children's needs; 2) Children receive appropriate services to meet their educational needs; and 3) Children receive adequate services to meet their physical and mental health needs.

### **CFSR Outcomes and Indicators Poster: Safety, Permanency and Well-Being Outcome Items**

The document, "CFSR Outcomes and Indicators Poster" is available from the Module 4 Chapter 1 Attachments tab. This document provides additional detail and will be useful in training and in your work.

### **Child and Family Services Improvement Act**

The 2006 Child and Family Services Improvement Act requires states to describe standards for the content and frequency of case worker visits for children in foster care that, at a minimum, ensure:

- Monthly face-to-face visits with children
- Visits are well-planned and focus on case planning and service delivery issues to ensure child safety, permanency and well-being.

### **Fostering Connections to Success and Increasing Adoptions Act**

The Fostering Connections to Success and Increasing Adoptions Act of 2008 requires child welfare workers to:

- Exercise due diligence to identify and notify all adult relatives of options to become child placement resources within 30 days of the child's removal.
- Ensure that each child receiving Title IV-E funding be a full-time student.
- Make reasonable efforts to place siblings in the same placement, or facilitate visitation with those that can't be placed together.

The Act also:

- Improves state / tribal incentives to promote adoption and provides support to some relative caregivers
- Provides for direct Title IV-E funding to Indian Tribes
- Adds a new definition of “child.”

Refer to the “SSA and Federal Child Welfare Law Amendments” chart for more details.

## SSA and Amendments Summary

Legislation related to Title IV-E of the SSA moves child welfare toward improving safety, permanency and well-being outcomes for children.

Taken as a whole, these laws and amendments:

- Increase system accountability to children and families through the CFSR process.
- Increase agency and worker awareness of family strengths and needs by committing to family-centered practice.
- Improve delivery of strengths-based services to children and families.

## Federal Legislation

Recall that major pieces of legislation are related either to the SSA or to CAPTA (Child Abuse Prevention and Treatment Act). You learned about the SSA and its amendments; next we will consider CAPTA, its amendments, and related legislation.

SSA and Amendments	CAPTA and Amendments
<ul style="list-style-type: none"><li>• Title IV-E</li><li>• AACWA</li><li>• Family Preservation &amp; Support Services Program Act</li><li>• MEPA/IEPA</li><li>• ASFA</li><li>• Promoting Safe &amp; Stable Families Amendments</li><li>• Safe &amp; Timely Interstate Placement of Foster Children Act</li><li>• Child &amp; Family Services Improvement Act</li><li>• Fostering Connections to Success &amp; Increasing Adoptions Act</li></ul>	<ul style="list-style-type: none"><li>• CAPTA</li><li>• Child Abuse Prevention &amp; Treatment &amp; Adoption Reform Act</li><li>• Child Abuse Amendments</li><li>• Child Abuse Prevention, Adoption, &amp; Family Services Act</li><li>• Child Abuse Prevention &amp; Treatment Amendments</li><li>• Keeping Children &amp; Families Safe Act</li><li>• Adam Walsh Child Protection &amp; Safety Act</li></ul>

Before continuing, locate the “CAPTA and other Federal Child Welfare Legislation” chart in the Module 4 Chapter 1 Attachments tab. This document provides additional detail and will be a useful reference in training and in your work.



## Child Abuse Prevention and Treatment Act (CAPTA) and other Federal Legislation

One of the most influential pieces of federal child welfare legislation was CAPTA. This Act significantly changed the shape and scope of child welfare and child protection practice.

CAPTA has been the impetus for implementing the following laws:

- Child Abuse Prevention and Treatment and Adoption Reform Act of 1978
- Child Abuse Amendments of 1984
- Child Abuse Prevention, Adoption, and Family Services Act of 1988
- Child Abuse Prevention and Treatment Amendments of 1996
- Keeping Children and Families Safe Act of 2003
- Adam Walsh Child Protection and Safety Act of 2006.

This section focuses on CAPTA and its relationship to Fourth Amendment Rights, the Child Abuse Prevention, Adoption, and Family Services Act, the Keeping Children and Families Safe Act and the Adam Walsh Child Protection and Safety Act.

## CAPTA: The Child Abuse Prevention and Treatment Act

The Child Abuse Prevention and Treatment Act was first authorized in 1974 and re-authorized in 2003. CAPTA provides federal grant money to states to prevent and treat child abuse.

The Minnesota legislature enacted Minnesota Statute 626.556 (Reporting of Maltreatment of Minors Act) to comply with CAPTA and receive federal funding. Chapter 2 addresses Minnesota-specific requirements stemming from CAPTA.

### Fourth Amendment Rights and CAPTA

Much of CAPTA clarifies the U.S. Constitution's Fourth Amendment rights in relationship to child welfare services.

- The Fourth Amendment guarantees the right of all people to be secure in their homes and property against unreasonable search and seizure.
- The Fourth Amendment also provides that no warrants shall be issued except upon probable cause and then only as to specific places to be searched, and persons and things to be seized.

To ensure compliance with the Fourth Amendment, CAPTA:

- Requires notice to the subject of a child maltreatment assessment or investigation of allegations against him or her
- Requires training for child welfare workers to protect the legal rights of children and families during assessments and investigations
- Ensures against unreasonable, warrantless entry and search of homes, and unlawful seizures of minor children.

## Child Abuse Prevention, Adoption, and Family Services Act

MCWTS

Module 4 Chapter 1

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This 1988 Act emphasizes increasing the number of minority children placed for adoption, and provides for post-adoption services to families whose children have special needs. In addition, it establishes a national data collection system called NCANDS.

### **Keeping Children and Families Safe Act**

This 2003 Act mandates changes to state plan eligibility requirements for continued CAPTA funding, including policies and procedures for:

- Addressing the needs of infants affected by prenatal drug exposure
- Requiring child welfare workers to inform a person of the allegations and complaints against him or her at initial contact
- Training child welfare workers to protect the legal rights and safety of children and families
- Referring maltreated children under age three to early intervention services.

### **Adam Walsh Child Protection and Safety Act**

Following a widely publicized kidnapping that resulted in the child's death, Congress enacted the 2006 Adam Walsh Child Protection and Safety Act. This act requires:

- Fingerprint-based checks of prospective foster or adoptive parents against the national crime information databases (NCID)
- Checks of state child abuse and neglect registries for prospective foster or adoptive parents and any other adults living in the home in the preceding five years.

### **CAPTA and Other Federal Legislation Summary**

CAPTA and related legislation move child welfare toward improving safety, permanency and well-being outcomes for children.

Taken as a whole, these laws and amendments:

- Provide family-centered, strengths-based training to child welfare workers
- Ensure the rights of children and families throughout the life of the case
- Place child safety at the forefront of all interactions with families.

## Summary

Federal legislation focused on child safety, permanency and well-being provides the foundation for child welfare practice in Minnesota. These federal laws drive many of the state statutes, administrative rules and policies that guide Minnesota's provision of child welfare services.

## Next Steps

Visit the following links to the Minnesota Office of the Revisor of Statutes:

- FAQ (Frequently Asked Questions) about Minnesota Laws, Statutes and Rules, at <http://www.house.leg.state.mn.us/leg/faqtoc.asp?subject=7>
- Administrative Rules at <https://www.revisor.leg.state.mn.us/arule>

Continue to build your training binder with documents and printouts from this chapter. If you have not already done so, from the Module 4 Chapter 1 Attachments tab, locate and print:

- The SSA and Federal Child Welfare Law Amendments Chart
- The CAPTA and other Federal Child Welfare Legislation Chart. File these charts under the tab Policy: Federal/State.
- The CFSR Outcomes and Indicators poster. File it behind the Module 4 Resources tab.

Consult with your supervisor for specific Title IV-E procedures in your county and to identify your regional Title IV-E Eligibility Determination Trainer.

Consult with your supervisor to learn about the CFSR process in your county.

When you are ready, begin Chapter 2.